

NOTICE OF NON-RESPONSIVE AMENDMENT

The replies filed on 2/5/2008 and 2/26/2008 are not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The reply filed 2/5/2008 argues that the rejection is moot because the claims as amended are directed to the subject matter of the original claims, however, it does not clearly identify which rejection is considered moot, the written description rejection or lack of enablement rejection. In any case, the original claims 1-20 were rejected on the grounds of lack of enablement under 35 USC 112, 1st paragraph, and the enablement rejection was maintained after entry of the amendment (3/26/2007), although using additional evidence via the Normann et al. references to support the finding of non-enablement and acknowledging that working example was not prophetic in nature based on the Declaration (3/26/2007) filed by Applicant (thereby removing the prophetic nature issue as a basis or evidence for the finding of non-enablement).

The amendment (3/26/2007) and declaration (3/26/2007) were entered because the Examiner reopened prosecution after Appeal Brief (8/20/2007) in the non-final Office Action (11/05/2007). Since the Applicant filed an amendment/remarks (2/5/2008) with the notice of appeal (2/5/2008), after said non-final office action, the notice of appeal is defective and the amendment/remarks (2/5/2008) and appeal brief (2/26/2008) have been treated as a reply under 37 CFR 1.111. The Examiner directs the Applicant to the USPTO website at <<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/bpaifaq.html>>, specifically FAQ C.7 and C.8 which explains the reasoning for treating the Applicant's amendment/remarks and appeal brief as a reply under 37 CFR 1.111.

The enablement rejection cannot be considered to be moot on the basis that said amendment purportedly reinstates the subject matter of the original claims, since the Applicant has not shown how the subject matter of the original claims overcomes the enablement rejection as set forth in the office action (11/5/2007) and does not address the Normann et al. references which are cited therein as evidence supporting non-enablement. Further, the Applicant's appeal brief (2/26/2008) does not solve the problem as said appeal brief appears to ignore the enablement rejection as set forth in the Office Action (11/5/2007) and only responds to the enablement rejection as set forth in the previous Office Action (1/26/2007). For example, said appeal brief contains arguments directed to status of the working example as being or not being prophetic in nature; however, the enablement rejection as set forth in the Office Action (11/5/2007) is not based on said status as the Examiner accepted the assertion in the Declaration (3/26/2007) that the working example was not prophetic in nature. Also, as indicated above, the enablement rejection cites to the Normann et al. references as evidence supporting non-enablement of the claims. The appeal brief (2/26/2008), however, fails to address said references. See 37 CFR 1.111 (b) and (c).

Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Art Unit: 1616

Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. Examiner maintains a compressed schedule and may be reached Monday, Tuesday, Thursday, Friday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi

Patent Examiner

Technology Center 1600

May 7, 2008

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616